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RECEIVED

02 NOV 12 PM 2 51

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November 7, 2002

TN REGULATORY AUTHORITY
DOCKET ROOM

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

DOCKET NO.

02-01221

Re: Complaint of Ben Lomand Communications, Inc. against Citizens Communications Company of Tennessee, LLC d/b/a Frontier Communications of Tennessee

Dear Mr. Waddell:

Enclosed are the original and 14 copies of the complaint filed by Ben Lomand Communications, Inc. against Citizens Communications Company of Tennessee, LLC d/b/a Frontier Communications of Tennessee, along with my check in the amount of \$25.00 in payment of the filing fee. Please return one date stamped copy in the self-addressed stamped envelope also enclosed.

Sincerely,

Don

H. LaDon Baltimore
Ben Lomand Communications, Inc.

LDB/dcg
Enclosures

cc: Richard Tettlebaum, Esq.
J. Michael Swatts

CK# 2131 25.00
PAID
11/12/02

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RECEIVED
02 NOV 12 PM 2 51

IN RE:

COMPLAINT OF BEN LOMAND
COMMUNICATIONS, INC. ,

Against

CITIZENS COMMUNICATIONS
COMPANY OF TENNESSEE LLC,
d/b/a FRONTIER COMMUNICATIONS
OF TENNESSEE.

TN REGULATORY AUTHORITY
DOCKET ROOM

DOCKET NO. 02-01221

COMPLAINT

Complainant, Ben Lomand Communications, Inc. ("Ben Lomand"), by its counsel, for its complaint against Citizens Communications Company of Tennessee, LLC, d/b/a Frontier Communications of Tennessee ("Frontier") pursuant to Tenn. Code Ann. §65-4-117(1)¹, Tenn. Code Ann. §65-5-208(c)², and Tennessee Regulatory Authority ("TRA") Rule 1220-4-8-.09(b)³, alleges that Frontier has engaged, and continues to engage, in discriminatory and anti-competitive practices in violation of state law and orders of the TRA, as described below.

¹ Tenn. Code Ann. §65-4-117(1) gives the TRA the power to "investigate ... upon complaints any matter concerning any public utility."

² Pursuant to Tenn. Code Ann. §65-5-208(c), the TRA "shall, as appropriate ... adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive service or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements ... or other anti-competitive practices."

³ Rule 1220-4-8-.09(b) states, "Upon the complaint of any interested party that any telecommunications service provider has violated any of the anti-competitive or discriminatory rate prohibitions found in applicable rules or states, [the TRA] shall investigate the complaint and may convene a contested case proceeding if such complaint is found to have merit."

I. INTRODUCTION

1. Ben Lomand is a diversified telecommunications company, duly certified to do business in the State of Tennessee by the TRA through the grant of a Certificate of Convenience and Necessity and by franchises from the subject cities to furnish local exchange telecommunications, primarily telephone services, in the cities of McMinnville and Sparta.

2. Frontier is a telecommunications utility regulated by the TRA pursuant to Tenn. Code Ann. §§65-4-101 and 65-4-104. Its usual address for service is 300 Bland Street, Bluefield, West Virginia 24701.

3. Frontier filed a tariff on April 11, 2002 to offer two new services to business customers in McMinnville and Sparta (see Exhibit 1). The business flat rate is a term offering starting at six months which gives Frontier's business customers rate reductions in return for term commitments. There are also additional discounts with certain bundled services. This special tariff applies only to customers in McMinnville and Sparta exchanges. Frontier did not offer the same tariff to its customers located in its Weakley County, Putnam County, and Cumberland County exchanges.

II. JURISDICTION

4. The TRA has jurisdiction to consider the instant complaint pursuant to Tenn. Code Ann. §§65-4-117(1), 65-5-208(c), and TRA Rule 1220-4-0-09(b) which give the TRA both the power and duty to enforce the 1995 Tennessee Telecommunications Act and "other laws ... over which they have jurisdiction"; investigate and hold hearings regarding a complaint; insure that telecommunications carriers do not engage in anti-competitive practices; and "original jurisdiction ... to resolve all contested issues of fact or law." Furthermore, Section 251 of the

Communications Act of 1934, as amended by the Telecommunications Act of 1996, confers jurisdiction upon the TRA to enforce laws for the development of competitive markets.

III. ARGUMENT

A. Frontier's Tariff Results in Unjust Discrimination, Undue and Unreasonable Preference, and is Unreasonably Prejudicial.

5. By offering such tariff to its customers in its McMinnville and Sparta exchanges only, the tariff results in unjust discrimination, undue and unreasonable preference, and is unreasonably prejudicial. Therefore, Frontier should be required to withdraw the tariff.

6. Permitting Frontier to limit its new service offerings constitutes unjust discrimination to the customers in Frontier's other exchanges. Tenn. Code Ann. §65-4-122(a) provides that a public service company that

directly or indirectly, by any special rate, rebate, drawback or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such ... company makes any preference between the parties aforementioned, such ... company commits unjust discrimination, which is prohibited and declared unlawful.

Therefore, Frontier should be required to withdraw the tariff because the tariff is in violation of Tenn. Code Ann. §65-4-122(a).

7. By offering customers in the McMinnville and Sparta exchanges the new service offerings, Frontier is giving them an undue or unreasonable preference or advantage over customers in Weakley County, Putnam County, and Cumberland County exchanges because they would not be able to obtain the new service offerings since Frontier has not extended these new service options to those customers. Tenn. Code Ann. §65-4-122(c) states,

It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

Therefore, under Tennessee law, Frontier should be required to withdraw the new services.

8. The new service offerings to Frontier's customers in the McMinnville and Sparta exchanges results in other customers being unreasonably prejudiced. Tenn. Code Ann. §65-4-123 declares the telecommunications service policy of the State of Tennessee. It states that "the policy of the state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets." Furthermore, Tenn. Code Ann. §65-4-123 states, "[t]o that end, the regulation of telecommunication services and telecommunication service providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications service provider." Therefore, regulation of telecommunication service providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunication service provider. If the promotion of the new service offerings is limited to the McMinnville and Sparta exchanges, consumers elsewhere (both Frontier customers and non-Frontier customers) will be unreasonably prejudiced. Furthermore, such new service offerings create an "unreasonably prejudice or disadvantage" against Ben Lomand and its consumers in violation of Tenn. Code Ann. §65-4-123.

9. The new service offerings, including but not limited to, credits applied to each Business Flat Rate Line for a customer's selection of Citizens Long Distance as their InterLATA

and IntraLATA preferred interexchange carrier (PIC) and for a customer's subscription to Citizens Business DSL and/or Dedicated Internet Service constitutes unjust discrimination, undue and unreasonable preference, and is unreasonably prejudicial in violation of Tenn. Code Ann. §62-4-122(a) to those customers who do not or cannot make such selections or subscriptions. See Exhibit 1, General Customer Service Tariff at S3.2.1.(A) attached hereto.

B. Frontier's Tariff Results in Predatory Pricing and Violates Other Anti-Competitive Practices.

10. Upon information and belief, Ben Lomand further alleges that Frontier's new service offerings violate Tenn. Code Ann. §65-5-208(c) in that such new service offerings violate the prohibitions against cross-subsidization, predatory pricing, price squeezing, and other anti-competitive practices. Upon information and belief, Ben Lomand alleges that such anti-competitive practices include, but are not limited to, offering such new services below cost.

11. Frontier's new service offerings in the McMinnville and Sparta exchanges also constitutes unjust discrimination, undue or unreasonable preference or advantage, and result in Ben Lomand's customers being unreasonably prejudiced as a result of the violations of Tenn. Code Ann. §65-5-208(c), including, but not limited to, predatory pricing.

12. Ben Lomand is unreasonably prejudiced and disadvantaged in violation of Tenn. Code Ann. §65-4-123, by the anti-competitive practices of Frontier in violation of §65-5-208(c).

13. Due to Frontier's violations as set forth above, including, but not limited to, predatory pricing, Ben Lomand has lost customers and revenue. Furthermore, such violation by Frontier seriously threatens Ben Lomand's ability to compete in its market.

C. **Frontier's New Service Offerings Are Special Contracts in Violation of Tennessee Law.**

14. Ben Lomand further alleges that such new service offerings are special contracts in violation of Tennessee law as set forth by the Office of the Attorney General in a letter to the TRA dated May 31, 2002 (see Exhibit 2 attached hereto). In such letter, the Attorney General state that he has "fundamental concerns about the present and future role of special contracts." (A.G. letter, page 3). The Attorney General also quotes the United States Supreme Court when it states that the "policy of non-discriminatory rates is violated when similarly situated customers pay different rates for the same services." (A. G. letter, page 3).

15. The Attorney General goes on to state that "[w]hile competition has expanded the circumstances in which special contracts may be appropriate, the filed rate doctrine has not been abandoned ... [in Tennessee]." (A.G. letter, page 4).

16. "The TRA has the statutory duty to insure that special contracts are allowed only when special circumstances justify departure from the general tariffs. And it must also insure that any special rate is realistically and in practice made available to all customers who are similarly situated." (A. G. letter, page 4). The TRA has the duty to "prevent the allowance of special contracts from degenerating into a significant and illegal departure from the requirement of uniform rates available to all customers and fixed by published tariffs." (A. G. letter, page 4).

17. Ben Lomand further alleges that the special offerings in the tariff violate the provisions raised by the Attorney General. Furthermore, Ben Lomand alleges that such special offerings, to its information and belief, violate the Tennessee statutory provisions against predatory pricing and anti-competitive practices.

D. Frontier's Tariff is Unreasonable, Unjust Discrimination and is Unduly Preferential.

18. Ben Lomand further alleges that the special offerings tariff violates Tenn. Code Ann. §65-5-204(a)(1) which prohibits any public utility from establishing any rate which is "unreasonable, unjustly discriminatory, or unduly preferential." Tenn. Code Ann. § 65-5-204(a)(2) prohibits any public utility from adopting or imposing any unjust or unreasonable classification in the making or as the basis for any rate ... within this state."

19. A contested case is necessary for Ben Lomand to prove that the new service offerings in fact are predatory pricing and anti-competitive.

20. To the extent the TRA does not have jurisdiction, or has concurrent jurisdiction, to impose fines as set forth in Tenn. Code Ann. §65-4-122(d) and other sections and grant other relief, Ben Lomand reserves its right to bring action before any court, agency, board, or commission having jurisdiction.

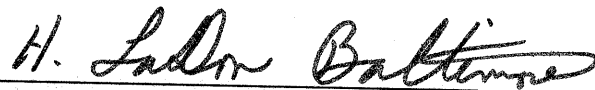
REQUEST FOR RELIEF

Based upon these allegations, Ben Lomand requests that the TRA:

1. Open an investigation concerning the special offerings of Frontier;
2. Convene a contested case concerning these offerings;
3. Terminate such offerings as in violation of state law;
4. Impose sanctions for any violation of state law, including, but not limited to, fines of \$50.00/day/violation since the implementation of the special offerings and \$2,000.00 for each instance of discrimination and unreasonable preference under Tenn. Code Ann. §65-4-122(d);

5. Award Ben Lomand damages as a result of Frontier's predatory pricing and other anti-competitive practices; and
6. Grant such other and further relief to which it may be entitled, including reasonable attorney's fees and costs.

Respectfully submitted,



H. LaDon Baltimore, BPR #003836
Farrar & Bates, L.L.P.
211 Seventh Avenue North, Suite 420
Nashville, TN 37219
(615) 254-3060
(615) 254-9835 FAX
Counsel to Ben Lomand Communications, Inc.

Certificate of Service

The undersigned hereby certifies that on this the 7th day of November, 2002, a true and correct copy of the foregoing has been forwarded via first class U. S. Mail, hand delivery, or overnight delivery to the following.

Richard Tettlebaum, Esq.
Associate General Counsel
Citizens Telecommunications
1400 16th Street NW, Suite 500
Washington, DC 20036

J. Michael Swatts
State Government Affairs Director
Citizens Communications
300 Bland Street
P. O. Box 779
Bluefield, WV 24701


H. LaDon Baltimore

GENERAL CUSTOMER SERVICES TARIFF

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Third Revised Page 5

S3. Basic Local Exchange Service (Continued)

S3.2 Monthly Exchange Rates (Continued)

(D) (Continued)

Calls made to exchanges outside the customer's serving local calling area, but within the geographic boundaries of the county, are accessed by dialing 1+ and/or 0+ even though these particular calls may be intracounty and local. Calls to exchanges within the county which can only be reached by 1+ dialing will be blocked for those customers who subscribe to toll restricted service on their line.

S3.2.1 Flat Rate Service

(A) Rates and Charges

Class & Grade of Service

All Exchanges

Business

One Party Access Line	\$ 31.25
Manual Access Line	31.25
Automatic Access Line	51.25
Automatic Access Line ⁽¹⁾	33.25

Residence

One Party Access Line	9.85
Manual Access Line	15.60

Business Flat Rate ⁽¹⁾

Contract Period ⁽²⁾

Business Flat Rate*	<u>6 mo</u>	<u>1 yr</u>	<u>2 yr</u>	<u>3 yr</u>
	\$12.50	\$12.00	\$11.50	\$11.00

(N)

|

(N)

(N)

* Includes Touch Tone

Note (1) Applicable to the McMinnville and Sparta exchanges only. Rate applies to existing and future customers.

Note (2) Termination charges will not exceed six percent (6%) of the total tariff term plan amount.

(N)

(N)

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Vice President
Regulatory and Carrier Services
Citizens Telecommunications Company
Bluefield, West Virginia

Continued
Effective: May 12, 2002

EXHIBIT

tabbies

1

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S3. Basic Local Exchange Service (Continued)

S3.2 Monthly Exchange Rates (Continued)

S3.2.1 Flat Rate Service (Continued)

(A) Rates and Charges (Continued)

Business Flat Rate ⁽¹⁾(Continued)

Monthly Credits

Monthly Credit will be applied to the monthly rate for Business Flat Rate Customers who purchase Citizens Long Distance Service and/or Citizens Business DSL or Dedicated Internet Service.

1. A \$0.50 per month credit will be applied to each Business Flat Rate Line, if the customer selects Citizens Long Distance as their Interlata and Intralata preferred interexchange carrier (PIC).
2. A \$0.50 per month Credit will be applied to each Business Flat Rate Line if the customer subscribes to Citizens Business DSL or Dedicated Internet Service.
3. A \$1.00 per month credit will be applied to each Business Flat Rate Line if the customer subscribes to both, Citizens Long Distance and Citizens Business DSL or Dedicated Internet Service (1. and 2. preceding).

Note (1) Applicable to the McMinnville and Sparta exchanges only. Rate applies to existing and future customers.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service

S10.1.1 General

(A) Digital Centrex Service is an electronic switching system provided from a central office which offers premium, versatile, and advanced communication features and service. Centrex Basic Service and Versaline Centrex includes various features and the ability to establish groups of lines with common and/or unique characteristics. The customer purchases his access line (local loop) separately from his flat usage component (blocks of busy hour capacity minutes-of-use (MOUS)). The flat usage component is commonly referred to as a Network Access Register (NAR). (N)

(A) (1) Versaline Centrex Service includes full Network Access. So the Network Access Register (NAR) does not apply. (N)

(B) A Digital Centrex System may be comprised of the following components:

Network Access¹
Main Station¹
Wire Center Lines¹
Terminating Arrangements Features

(C) Service Features will be grouped as follows:

- Series 1000 - Section S10.1.2.A(2)
- Series 2000 - Section S10.1.2.A(3)
- Series 3000 - Section S10.1.2.A(4)
- Attendant Feature Package - Section S10.1.2.A(5)
- Versaline - Section S10.1.2.A (6)

(N)

Note1 Every Centrex Basic Service system will include these components.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.1 General (Continued)

- (I) Service Charges as specified in Section S4. of this Tariff apply to all customer-requested moves and changes performed by the Company on the customer's premises.
- (J) Rates for the Main Stations of Digital Centrex customers will be based on the following criteria:
 - (1) Main Station Group Size
 - (2) The type of payment plan selected by the customer
- (K) The total Main Station size will consist of Main Station Lines and Attendant Access Lines for all locations served by the same Digital Centrex system.
- (L) Exchange Access
 - (1) Exchange Access for Centrex Basic Service is provided by means of Network Access Registers. (M)
 - (2) Presubscription of a Carrier of Preference is specified in Section 9 of the FCC Citizens Telecommunications Company #1 Tariff.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.2 Digital Centrex Features (Continued)

(A) (Continued)

(3) Line Feature Package-Series 2000:

Digital Centrex 1000 plus the following features: Automatic Callback (Camp-On) Call Park (Multiple), Circular Hunting, Data Line Security, Multiple Classes of Service, Saved Number Redial, Speed Call Long List (System), and Uniform Call Distribution.

(4) Line Feature Package-Series 3000:

Digital Centrex 1000 and 2000 plus the following features: Call Forward/Busy No Answer Split, Executive Busy Override, Incoming Call Forward, MultiLevel Restriction, Off-Hook Queuing, Remote Access to Features, Ringback Queuing, Speed Call Long List (Individual), and Within Group Call Forward.

(5) Attendant Feature Package:

Access to Paging, Autodial, Automatic Recall, Busy Verification, Call Hold, Call Park, Call Selection, Camp On, Code Calling Line Termination, Conference, Console Activation of Call Forward, Console Test, Control of Trunk Group Access, Control of Virtual Facility Groups, Delayed Operation, Display of Queued Calls by ICI Key, Flexible Console Alerting, Interposition Calls, Locked-Loop Operation, Lockout, Multiple Listed Directory Numbers, Position Busy, Priority Console Alerting, Recorded Announcement, Secrecy, Serial Call, Speed Call, Transfer, Two-Way Split, Wildcard Key.

(M)

(M)

Material moved from Section 10, Page 8.

(N)

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.2 Digital Centrex Features (Continued)

(A) (Continued)

(6) Versaline Features

(N) (M)

Call Forward Variable

Call Forward No Answer Variable Timer

Call Forward No Answer (30 seconds)

Call Forward Fixed

Call Forward Busy

Speed Call 8

Speed Call 30

Call Pick up

Directed Call pick up

Last number redial

3 Way Conference call

Call hold

Call Waiting (customer specific)

Hunting (customer specific)

Touch Tone

Call Transfer

Ring Again

Group Intercom (dependent on customer equipment)

(N)

(M)

Material moved to Section 10, Page 7

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.2 Digital Centrex Features (Continued)

(A) (Continued)

(7) Optional Features:

(T)

Attendant Flexible Night Answer, Attendant Identification-Multiple Directory Numbers, Attendant Predetermined Night Answer (PNA), Attendant Universal Night Answer (UNA), Authorization Codes (per group of 100), Automatic Route Selection (ARS), Code Calling Access, Conference Calling (8, 16, 24 port), Dictation Access, ETS/CCSA Access, FX/FCO Access, Meet-Me Conference, Music-On-Hold, Paging/ Public Address Access, Preset Conference, Priority Queuing, Proprietary Set Interface, Pseudo Number, Recorded Announcement (Custom), Second and Third Recorded Announcement, Speed Call Long List (Additional System), Station Message Detail Recording, Stop Hunt, Terminal Make Busy, Tie Facility Access, T1 Access, WATS Access, 800 Access.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features

- (A) A customer subscribing to one of the Line Feature Packages in S10.1.2.A(2), (3), (4), and (5) may order additional optional features at the rates shown in Section S10.1.6.B(6) of this Tariff.
- (B) Digital Centrex Basic Service includes the following basic service (T) features:

-Automatic Identification of Outward Dial:

This feature identifies all calls leaving the customer group by the station number from which calls are placed.

Common Recorded Announcement on Intercept:

This provides a standard recording for intercept of calls to unassigned numbers.

Direct Inward Dialing:

This feature allows incoming calls from the exchange network to reach a specific station without attendant assistance.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(F) Attendant Feature Package (Continued)

Wildcard Key:

This feature allows any special feature normally available through the use of a feature key to be invoked through the Wildcard Key, with the exception of ICI.

(G) Versaline Features

Call Forward Variable

Allows a station user to redirect all calls for that line to another telephone number. The number that calls are forwarded to is restricted by the line's class-of-service.

Call Forward No Answer Variable Timer

Allows incoming calls to a station line to be automatically routed to a preselected station line when a called station is not answered after a preset number of rings. This feature must be programmed by the Telephone Company. Forwarded calls can be limited to those originating from outside the customer group

Call Forward No Answer (30 seconds)

Allows incoming calls to a centrex line to be automatically routed to a preselected centrex line when a called station is not answered after a preset number of rings. The station user has the ability to change the number to which calls will be forwarded. Forwarded calls can be limited to those originating outside the customer group.

(N)

(M)

(M)

(N)

Material moved to Section 10, Page 34.

(N)

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(G) Versalline Features (Continued)

Call Forward Fixed

Provides an automatic connection between a calling station going off hook and a predetermined terminating number.

Call Forward Busy

Allows incoming calls to a busy line to be automatically routed to a preselected centrex line. The station user has the ability to change the number to which calls will be forwarded. Forwarded calls can be limited to those originating outside the customer group.

Speed Call 8

Provides a centrex line user with abbreviated dialing. It is limited to single digit codes and can be accessed by only one user.

Speed Call 30

Provides a station user with abbreviated dialing. The individual long list provides two digit codes and is dedicated to one station user.

Call Pick up

Allows a station to answer incoming calls to another station within a defined call pickup group. This feature is provided on individual stations within a customer group.

Directed Call pick up

Allows a centrex line user to answer calls directed to a specific centrex line from any other centrex line in the customer group by dialing a feature code and the number of the ringing station.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(G) Versaline Features (Continued)

Last number redial

This feature allows a station user to redial the last number dialed by utilizing an access code.

-3 Way Conference call

This feature permits a station user using the consultation hold feature to put one party on hold, reach a third party, and bring all three parties together in a three-way connection.

Call hold

This feature allows a station user to "hold" any call in progress by flashing and then dialing a "hold" code, thus freeing the same line for the purpose of originating another call or returning to a previously held call

Call Waiting (customer specific)

Notifies a busy Main Station Line, when the Main Station Line is so equipped, that an incoming call is waiting (burst of tone), and permits holding the connection while answering the new call and return to the original connection. This can be on all calls or inter-business group calls only.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(G) Versaline Features (Continued)

Hunting (customer specific)

This is a call completion feature that increases the likelihood of an incoming call being completed within a customer defined group of lines. Three types of hunting are available

- 1) Directory Number Hunting (DNH) - DNH may be either circular or sequential
- 2) Circular hunting hunts all lines in the group regardless of the starting point.
- 3) Sequential hunting starts at the number dialed and ends with the last number in the group.

Multi-Line Hunting - Only the pilot number of the hunt group may be dialed to access the hunt group. Hunting proceeds from the pilot number to the last number in the group.

Distributed Line Hunting (DLH) - Only the pilot number of the hunt group may be dialed to access the group. Hunting starts after the first idle line found by the previous hunt and continues until the starting point of the hunt is reached. DLH provides an equal distribution of calls within the hunt group. DLH is used in conjunction with the uniform call distribution feature.

Touch Tone

This feature equips all station lines for touch call dialing.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(G) Versaline Features (Continued)

Call Transfer

Call Transfer provides for the transfer, by a Digital Centrex station, of calls within or outside the business group. The Three-Way Calling Feature is needed in addition to Call Transfer for this feature to work.

Ring Again

Automatic Callback permits a Main Station user who attempts an intercommunication call to a busy Main Station to be automatically connected to that line when both called and calling lines are subsequently idle.

Group Intercom (dependent on customer equipment)

Provides abbreviated dialing for station to station calls within the customer group.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features*

(N)

(M)

(The features below can be ordered individually at the rates shown in Section S10.1.6.B(6) of this Tariff).

Attendant Flexible Night Answer:

This feature permits the attendant to change the Predetermined Night Answer station number by dialing a feature code plus the new night answer station number.

(M)

Attendant Identification-Multiple Directory Numbers:

The attendant is able to identify an incoming call by Directory Number using the console display. If the customer has multiple directory numbers, the attendant will know by the number appearing on the console display which department is being called.

Attendant Predetermined Night Answer:

This feature, activated by the attendant, routes calls placed to the listed directory number to some predetermined station, hunt group, or station. This feature also allows transfer of calls during commercial power failure.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

Material moved from Section 10, Page 33.

(N)

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Attendant Universal Night Answer:

When activated by attendant, listed number calls are routed to this equipment. Calls can then be answered by individual stations by dialing the associated feature code. This feature also allows transfer of calls during commercial power failure.

Authorization Codes (AC):

The AC feature allows the customer to define a set or sets of dialing privileges, to associate an AC with each set, and to use the AC to restrict the dialing privileges to authorized personnel. The AC must be dialed before a call can be advanced. A customer cannot have authorization codes with a different amount of digits.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Automatic Route Selection (ARS):

ARS provides for the origination of ten-digit, off-network calls to a public telephone number. An access code is dialed followed by the destination digits. A pattern is selected and the route list is checked for an idle route with the proper FRL (if a feature). If no idle route is available, the call is put into queue for the primary route or sent to reorder tone. Routes may include Foreign Exchange, WATS, and interexchange carrier lines. A maximum of 3 patterns will be allowed for each NPA or NPA NXX list. A maximum of 10 routes is allowed per pattern. Each WATS band is considered a separate route.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Automatic Route Selection (ARS): (Continued)

A maximum of 64 NPA NXX lists will be allowed. ARS does not allow for toll restriction or toll diversion. This feature may also include:

- Expensive Route Warning (ERWT):

A tone will be assigned to certain routes as designated by the customer. When one of these designated routes is selected, a tone will be returned to the originating caller. The caller has a specified number of seconds to hang up or the call will be advanced on the expensive route.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(G) Optional System Features* (Continued)

(T)

Automatic Route Selection (ARS): (Continued)

- Facilities Restriction Level (FRL):

Each main station line is assigned an FRL as is every facility in all routes. When a call is originated, the FRL of the main station line is compared to the FRL of the facility selected for routing. If the FRL on the facility is equal to or less than the main station FRL, the call is advanced. If the FRL on the facility is greater than the FRL on the line, a tone is returned. An Authorization Code can be dialed to override the FRL. FRL's are furnished only with ARS. The maximum number of FRL's available is 8. All main station lines and incoming tie-line terminations with ARS capability must be assigned an FRL.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Automatic Route Selection (ARS): (Continued)

- Time of Day Routing:

This feature provides for route selection based on the most economical path for a particular time of day.

Conference Calling:

This feature permits a station user or attendant to form a conference with a maximum of twenty-four parties, including other stations and/or parties reached over trunks. The capability for offering the feature is provided in multiples of six or eight, dependent on central office technology.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Code Call Access:

Code Calling provides dial access to customer premises located code calling equipment by Main Station attendant access of a Digital Centrex system. The dialed two- or three-digit code activates signaling devices on the customer's premises to produce a coded signal corresponding to the dialed code. The called party, upon recognition of the signal, is automatically connected to the calling party by dialing a special code from any Main Station in the system. For Rates and Charges applicable for control channels when required for supervision purposes with equipment and/or apparatus located on the customer premises, refer to Section S15. of this Tariff for Private Line rates.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Dictation Access and Control:

This feature provides for station access to customer provided dictation equipment. For Rates and Charges applicable for control channels when required for supervision purposes with equipment and/or apparatus located on customer premises, refer to Section S15. of this Tariff for Private Line rates.

ETS/CCSA Access:

This feature provides access to and from an ETS/CCSA network.

FX/FCO Access:

This feature provides access to and from an InterLATA or IntraLATA Foreign Exchange Circuit or Foreign Central Office Circuit.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Meet-Me Conference

This feature allows conferees to hold a conference on a six-party conference bridge by dialing a directory number at a specified time. (Requires Conference Calling Feature).

Music-on-Hold:

This feature provides access to a common music source for use with call hold, transfer, park, and queuing features.

Paging/Public Address Access:

This feature provides a central office interface to a customer premises for paging and/or public address.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Preset Conference:

This feature allows a station or attendant console to establish a preset conference by dialing a specific directory number. The dialing of the DN invokes a simultaneous ringing of the preselected conferees. (Requires Conference Calling feature).

Priority Queuing:

This feature permits a station user remaining off-hook to queue for a facility to obtain a line ahead of another station user queuing for a facility that goes on-hook.

Proprietary Set Interface:

This interface provides capability to connect business sets to Digital Centrex. When Display sets are used, this will allow the activation, where available, of calling number display (intra-business group only), call announce, and visual message waiting indication.

The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(M)

Pseudo Number:

A software number that has no real switch hardware attached, but is given all the data base characteristics associated with a normal line. The pseudo number provides multi-line set capability, allows the user to originate and receive calls, and to use Digital Centrex features as assigned just as though the pseudo number was a real line identity. Pseudo numbers may also be assigned in a hunt group configuration.

Recorded Announcement:

This feature routes calls to a recording (may be customized) at the Telephone Company's Central Office.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Second and Third Recorded Announcements:

Allows customers to specify delay periods between announcements to calls in UCD or ACD queues and the type of treatment callers are given during those delays.

Speed Call Long List (System):

This feature allows members of a customer business group to share a common speed call list of 30 members. The first list is included in the Series 2000 package rate. This rate is for an additional list (not to exceed eight (8) lists).

Station Message Detail Recording (SMDR):

This feature provides an SMDR formatted-type record of chargeable and nonchargeable calls for each customer group.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

Stop Hunt:

This feature uses a code which allows the hunting process to stop when a particular line is reached in a hunting sequence.

Terminal Make Busy:

This feature uses a code to make a specific terminal, or groups of terminals in a hunting group look busy.

Tie Facility Access:

This feature provides access to and from an InterLATA or IntraLATA tie facility.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(H) Optional System Features* (Continued)

(T)

T1 Access:

This feature provides a trunk side connection to a High Capacity Digital Channel within the Digital Centrex system. Each T1 Access termination is equivalent to 24 derived voice grade circuits.

WATS Access:

This feature provides the customer access to an inter-exchange carrier for bulk toll calling.

800-Service Access:

This feature permits 800 Service Access to terminate in the Digital Centrex Service System.

* The contract period for the Optional System Features is based upon the initial contract period for the Digital Centrex System. Subsequent Optional System Feature additions will be rated under a new contract or an addendum to an existing contract based upon the remaining period of the initial contract.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(I). Additional Versaline Features

a. Automatic Busy Redial

Is an arrangement which permits the customer to redial automatically the last number dialed. If the called line is found to be busy, a 30-minute queuing process begins. The customer is then given an indication that the network will attempt to set up the call when the called line is idle. The network periodically tests the busy/idle status of the called line until both lines are found idle, the customer cancels the request, or the queuing process expires. If both lines are found to be idle, the calling party is alerted with a distinctive ring signifying that the call can now be completed.

b. Automatic Call Return

Allows a customer to automatically return the last incoming call, if that call is not marked "private", whether it is answered or not. The call is returned by customer activation of a code. If the called line is found to be busy, a 30-minute queuing process begins. The customer is given an indication that the network will attempt to set up the call when the called line is idle. The network periodically tests the busy/idle status of both parties until both lines are found idle, the customer cancels the request, or the queuing process expires. If both lines are found to be idle, the called party is alerted with a distinctive ring signifying that the call may now be completed. Calls marked "private" are not identified by and cannot be returned via this feature.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.3 Definition of Features (Continued)

(I). Additional Versaline Features (Continued)

c. Call Restrict - Per Line (CR-PL)

CR-PL blocks the display of the customer's directory number and or directory number/name on all calls made from a particular line on the terminating subscriber's display equipment. Also prevents their calls from being identified or returned via use of Call Return Service. The customer can unblock a single call by dialing the unblocking code, *82 or 1182 for rotary lines before dialing the number being called. Once the call is completed the line is automatically blocked, therefore, the blocking code *67 is not an applicable, usable and has no effect on the blocking of the call. The CR-PL feature does not prevent the delivery of billing number information through the use of Automatic Line Identification (ANI) technology such as Feature Group D Switched Access Service. It also has no effect on the information transmitted to Enhanced 911 (E911) emergency system operators.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.6 Rates and Charges (Continued)

(C) Versaline Centrex

a. Application

The rates and charges shown herein apply in addition to all other applicable rates and charges shown elsewhere in the Company's Tariff.

b. Service Rates

Monthly Recurring Rates – 2 lines and greater

	<u>MTM</u>	<u>6 mo</u>	<u>1 yr</u>	<u>2 yr</u>	<u>3 yr</u>
Versaline*	\$14.50	\$13.50 ⁽¹⁾	\$12.50 ⁽¹⁾	\$11.50 ⁽¹⁾	\$10.50 ⁽¹⁾

* The Versaline Centrex Offering is restricted to the McMinnville and Sparta exchanges only

Note (1) Termination charges will not exceed six percent (6%) of the total tariff term plan amount.

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.6 Rates and Charges (Continued)

(C) Versaline Centrex (Continued)

c. Monthly Credits

Monthly Credit will be applied to the monthly rate for Versaline Customers who purchase Citizens Long Distance Service and/or Citizens Business DSL or Dedicated Internet Service.

1. A \$1.00 per month credit will be applied to each Versaline, if the customer selects Citizens Long Distance as their Interlata and Intralata preferred interexchange carrier (PIC).
2. A \$1.00 per month Credit will be applied to each Versaline if the customer subscribes to Citizens Business DSL or Dedicated Internet Service.
3. A \$2.00 per month credit will be applied to each Versaline if the customer subscribes to both, Citizens Long Distance and Citizens Business DSL or Dedicated Internet Service (1. and 2. preceding).

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S10. Central Office Non-Transport Service Offering (Continued)

S10.1 Digital Centrex Service (Continued)

S10.1.7 Subsidiary System Arrangement

(A) General

(M)

(1) A Subsidiary System of a Digital Centrex system is a customer-provided equipment system which is furnished Automatic Access lines from the central office serving the customer's Digital Centrex system and which is connected by tie lines to that Digital Centrex system.

(2) A Subsidiary System Arrangement provides station numbers which are in sequence with the main station line numbers of the customer's Digital Centrex system to the stations of one or more Subsidiary Systems.

(M)

(B) Regulations

(1) Subsidiary System Arrangement (SSA) station numbers are provided by the same central office equipment and facilities which furnish Direct-Inward-Dialing (DID) service and will only be furnished where adequate DID facilities are available in the central office serving the customer's system and where the Subsidiary System is properly equipped for DID service.

(2) The Automatic Access Lines of the Subsidiary System are provided at the same rates and charges as specified for such PBX Access Lines furnished from the central office serving the customer's Digital Centrex system. In addition, foreign central office or foreign exchange mileage charges are applicable to those Automatic Access Lines when the Subsidiary System is located outside the area of that serving central office.

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(N)

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STATE OF TENNESSEE

Office of the Attorney General

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May 31, 2002

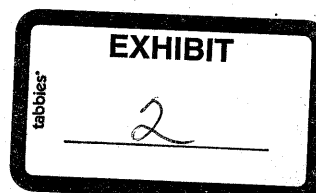
The Honorable K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: Proposed Rulemaking Hearing Rules, Chap. 1220-4-2,
Regulations for Telephone Companies

Dear Mr. Waddell:

My staff and I have reviewed the above-referenced set of rules, which you have submitted to this Office for approval as to legality in accordance with T.C.A. § 4-5-211. These proposed rules concern the provisioning of tariff term plans and special contracts, and establish regular procedures for consideration and approval of such plans and contracts by the Tennessee Regulatory Authority. I am unable to approve the rules in their present form because I believe, for the reasons hereinafter outlined, that proposed rules 1220-4-2-.59(6)(a) and 1220-4-8-.07(3)(a) violate the Public Records Act. In addition, I find that the definitions of "Affiliate" and "Revenue Price-out" contained in proposed rule 1220-4-2-.59(1)(a) & (d) are unclear and should be reworded. Consequently, I am returning the rules to you for appropriate modification by the TRA.

In addition, there are other features of the proposed rules that present serious legal issues, and I would appreciate it if any resubmission of revised special contract rules is accompanied by the Authority's comments on how the proposed rules address these issues. Fundamentally, I am concerned about the absence from the proposed rules of any mechanism to ensure that special contracts and tariff term plans are indeed justified by special conditions and



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do not constitute discriminatory and illegal rates. Moreover, proposed rule 1220-4-2-.59(4) raises concerns because it recognizes termination charges that under some circumstances might constitute penalties for breach of contract. While I have not reached a final decision on these issues at this time, I would appreciate the benefit of the Authority's insights in these regards.

I must reject the rules in their present form because they violate Tennessee's Public Records Act, which is very broad in scope. T.C.A. § 10-7-503 provides that "[a]ll state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." The provisions of proposed rules 1220-4-2-.59(6)(a)(2), 1220-4-2-.59(6)(a)(4)(i), and 1220-4-8-.07(3)(a), which would allow customer names and addresses to be redacted or filed under "proprietary seal," conflict with the Public Records Act. Except when it is conducting a contested case hearing and in that context may order information obtained in discovery or offered at the hearing to be filed under seal pursuant to T.C.A. § 4-5-311(a) and T.R.C.P. 26.03, the TRA is required by the Public Records Act to make its records available to the public. Moreover, while there is a federal policy against disclosure of proprietary customer information, *see* 47 U.S.C. § 222(c)(1), that policy yields to other requirements of law and is not implicated by the State requirement that tariff information must be publicly available.

The only exception for the TRA from the Public Records Act derives from T.C.A. § 65-3-109. While this provision now expressly refers to the Department of Transportation, it previously referred to the Public Service Commission and, I believe, continues to apply to the TRA through the general provisions of T.C.A. § 65-4-105(a). Section 65-3-109 provides:

The Department shall not give publicity to any contracts, leases, or engagements obtained by it in its official capacity, if the interests of any company would thereby be injuriously affected, unless, in the judgment of the department, the public interest requires it.

Reading "Department" to mean, in this context, the TRA, this statute does allow the TRA to maintain the confidentiality of contracts when revealing their contents would injure a utility, unless the public interest requires disclosure.

Section 65-3-109 does not, however, allow the TRA by generally applicable rule to decide, in effect, that disclosure of special contracts would injure the companies involved, and further to conclude that the public interest does not override any such injury that may exist. Such a blanket rule would conflict with the spirit of both the Public Records Act and § 65-3-109. Therefore, I am unable to approve the legality of the portions of the proposed rules that would allow the TRA, as a general practice, to place under seal the identity of participants in special contracts. For this reason I am now returning these rules to you for appropriate revisions.

This initial finding also relates to my fundamental concerns about the present and future role of special contracts in utility regulation in Tennessee. Full compliance with the Public Records Act is particularly important in this context because disclosure of the identity of a customer benefitting from a special contract will often be essential to ensure that the favorable terms of such a contract are made available "to any other customer for service of a like kind under substantially like circumstances and conditions," which is the exact language of the proposed rules at 1220-4-2-.59(3) and 1220-4-8-.07(3)(b). As you know, the guiding principle of our statutes is "to secure equality of rates as to all and to destroy favoritism, these last being accomplished by requiring the publication of tariffs and by prohibiting secret departures from such tariffs, and forbidding rebates, preferences, and all other forms of undue discrimination." *New York, N.H. & H.R.R. Co. v. I.C.C.*, 200 U.S. 361, 391, 26 S.Ct. 272, 277 (1906). Thus the "filed rate" doctrine is the lynchpin of utility regulation in Tennessee, as it traditionally has been across the country. While our law does recognize "special rates," T.C.A. § 65-5-201, the courts have made clear that "[a] special rate, like the general rate, can only be established under supervision of the Commission **and for reasons obviously stronger**." *New River Lumber Co. v. Tennessee Railway Co.*, 145 Tenn. 266, 293, 238 S.W. 867 (1921)(emphasis added). The whole thrust of these proposed rules, by making approval of special contracts a routine event occurring on an abbreviated timetable with little opportunity for review by the TRA or the public, and without any specification of the types of reasons that will be deemed to justify departure from the general tariffs, is of great concern to me.

The United States Supreme Court has recently reaffirmed that "[r]egardless of the carrier's motive — whether it seeks to benefit or harm a particular customer — the policy of nondiscriminatory rates is violated when similarly situated customers pay different rates for the same services." *AT&T v. Central Office Telephone, Inc.*, 524 U.S. 214, 223, 118 S.Ct. 1956, 1963 (1998). While the proposed rules recognize this principle, they do not incorporate any mechanism to give it vitality; rather, they appear to erode the traditional protection afforded through specific consideration by the TRA of special contract proposals. It is crucial in considering whether a proposal is discriminatory to follow the three-step inquiry: "(1) whether the services are 'like'; (2) if they are, whether there is a price difference between them; and (3) if there is, whether that difference is reasonable." *Competitive Telecommunications Ass'n v. F.C.C.*, 998 F.2d 1058 (D.C. Cir. 1993). In making this determination, the courts use the "functional equivalency" test developed by the FCC — that is, whether the services are "different in any material functional respect." *American Broadcasting Cos. v. F.C.C.*, 663 F.2d 133 (D.C. Cir. 1980).

Special contracts originally arose when needed services were not available under the general tariffs. They have been approved over the years when carriers have been able to establish that differences in circumstances and conditions justify different rates. *Southern Railway Co. v. Pentecost*, 205 Tenn. 716, 330 S.W. 321 (1959). I am aware that more modern cases recognize that in a competitive environment, negotiations between provider and customer

may produce packages suited to a customer's needs, in which the mix of services and features differs to such an extent that the options are not "like" services. The law "is not concerned with the price differentials between qualitatively different services or service packages." *Competitive Telecommunications Ass'n v. F.C.C.*, 998 F.2d 1058, 1064 (D.C. Cir. 1993). These cases also recognize that the existence of competition, at least in the general sense, may be a factor in determining whether a special rate is permissible.

A useful example of special contract consideration in the modern context is found in the rules of the Federal Communications Commission. Those rules permit contract service arrangements in strictly defined circumstances, depending upon the existence and general level of competition. 47 C.F.R. §§ 69.709; 69.711; 69.713. They require carriers seeking pricing flexibility through contract service arrangements to file a petition establishing carefully specified conditions in the relevant marketplace, and to submit to an elaborate process allowing for interested parties to oppose the petition. The FCC rules delay the effective date of such petitions for three to five months after the close of the pleading cycle. 47 C.F.R. § 1.774. And even though the FCC rules allow for volume and term discounts, *see* 47 C.F.R. § 61.55, they expressly provide that contract services must be made "generally available to all similarly situated customers" 47 C.F.R. § 69.727(a)(1). Thus while competition has expanded the circumstances in which special contracts may be appropriate, the filed rate doctrine has not been abandoned. The governing Tennessee statutes have not been amended, and the TRA has not deregulated telecommunications services in Tennessee. The presumption is always against a special contract rate and in favor of the general rate.

The TRA has the statutory duty to ensure that special contracts are allowed only when special circumstances justify a departure from the general tariffs. And it must also ensure that any special rate is realistically and in practice made available to all customers who are similarly situated. Active enforcement of the provisions of T.C.A. §§ 65-4-122 and 65-5-204 is essential to prevent the allowance of special contracts from degenerating into a significant and illegal departure from the requirement of uniform rates available to all customers and fixed by published tariffs. While a regime of special contracts might benefit a few customers in the short run, in the long run it would stifle competition and shift the great burden of utility cost recovery to the consumers who are unable to obtain special consideration. Tennessee law does not allow a regime of special rates or discriminatory discounts negotiated by each customer having sufficient bargaining power to command special treatment.

Our law does not specify the precise manner in which the TRA is to examine special contracts, leaving the Authority with considerable discretion in fulfilling its broad mandate. Nevertheless, I am concerned that several features of the proposed rules appear to reduce the level of scrutiny of special contracts and tariff term plans. Initially, the rules contain no standards at all to indicate any of the circumstances in which special arrangements will be deemed appropriate. In contrast to the FCC rules, for instance, these proposed rules give no hint

of the conditions that justify departure from the general tariffs. The proposed rules do place certain restrictions on provisions that may be included in special contracts, but the rules fail to address the conditions of inadequate utility service that would make a special contract appropriate in the first place. Moreover, the proposed rules provide that review by the full TRA is no longer necessary for approval of a special arrangement. Instead, special contracts with non-affiliate customers are "deemed approved" ten days after they are filed, and tariff terms plans are "deemed approved" thirty days after filing. Proposed rule 1220-4-2-.59(7). While the Executive Secretary has power under proposed rule 1220-4-2-.59(8) to intervene before the effective date and suspend implementation of a special contract to allow for further consideration, the very short timetable of these rules would often make such consideration impractical. Taken as a whole, these proposed rules appear to render special contracts not very "special," but routine.

Certainly under these proposed rules the TRA would retain power to review and deny permission for special contract arrangements. But the rules in practice appear significantly to undermine the general tariffs by creating a framework under which special contracts would ordinarily become effective after a very brief time, without close review by the TRA and without conforming to any standards for departure from the general tariffs. I am aware that the TRA customarily requires some evidence of the need for a special contract in each situation it reviews. And I realize that it is not unusual for tariffs to take effect on a relatively brief schedule without specific review by the Authority. But I am concerned that the proposed rules significantly reduce the likelihood of scrutiny for special contracts, without incorporating into the application process any showing of a need for departure from the general tariffs. Moreover, I would be particularly interested in any mechanism to ensure that special rates are, in practice, made readily available to other similarly-situated customers.

I realize that in the modern competitive setting, some of the traditional strictures on tariffing of services appear to be loosening. I am aware that incumbent local exchange carriers need to be able to compete in lucrative markets, so they can afford to provide service at reasonable rates in the rural areas where few competitors desire to venture. I know the TRA has worked diligently both to promote competition and to guarantee universal service. It would greatly assist this Office's review of any rules of this nature if the Authority could lend its insights on why the achievement of these things, under the current statutory framework, requires a multitude of special contract arrangements.

Further, proposed rule 1220-4-2-.59(4) raises concerns because it appears to allow for termination charges that in some instances might amount to impermissible penalties under Tennessee law. In *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88 (Tenn. 1999), the Supreme Court made clear that contractual provisions that are designed to penalize for breach of contract rather than to give the nonbreaching party the benefit of its bargain are unenforceable in Tennessee as against public policy. The proposed rule does not appear to limit termination charges to the actual damages from breach of contract. Rather, it contemplates repayment of discounts, a measure that

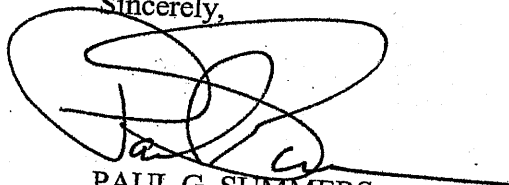
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may be unrelated to the actual damages the carrier has sustained on account of the breach. Under *Guiliano* the courts consider whether a liquidated sum was a reasonable estimate of potential damages at the time the parties entered into the contract. 995 S.W.2d at 100-01. Proposed rule 1220-4-2-.59(4)(c) caps termination charges at six percent of the special contract amount per year, or 24% of the contract amount for a term plan running longer than four years. This Office has insufficient factual information to determine whether the courts would construe these limits as a reasonable quantification of liquidated damages, rather than an impermissible penalty.

The TRA has very broad authority over the matters within its jurisdiction and, arguably, might establish particularized rules governing liquidated damages upon termination of utility services. But it is unclear whether the proposed limits accomplish this purpose, and, if they do not, whether the TRA has authority to sanction for utilities a practice that has otherwise been characterized by the Supreme Court as against public policy. Certainly, reducing high termination charges that stifle competition is a worthy goal; it is unclear whether the TRA may accomplish that goal through the means outlined in the proposed rules. I would be interested in any information the Authority may have to support the notion of termination charges that amount to repayment of discounts.

In summary, special contracts, in proper circumstances, are permissible, and the TRA has authority to make rules governing their terms. But public knowledge of such special contracts will often be essential in enabling customers to establish that they are similarly situated to another customer benefitting from a special rate. Therefore, the proposed blanket provisions allowing concealment of the names of favored customers are contrary to the proper operation of the Public Records Act, T.C.A. § 10-7-503, and are not saved by T.C.A. § 65-3-109, since they conflict with the TRA's duties to ensure uniform rates and to foster competition among providers of telephone services. Because of this conflict, I am unable to approve the proposed rules as submitted to this Office for review pursuant to T.C.A. § 4-5-211, and I am returning them to you with this letter. Should the TRA decide to resubmit revised rules that eliminate the Public Records violations but include other features of these rules, this Office would appreciate the Authority's comments on its vision for accommodating special contracts within our statutory framework that requires the TRA to ensure that unreasonable preferences in utility rates do not occur.

Sincerely,



PAUL G. SUMMERS
Attorney General and Reporter

PGS/CLL:kc
Enclosures